Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES

October Term
1986

No. 86-1977

FLORENCE ANNE BRIGGS,

Petitioner

INDIANA SUPREME COURT
DISCIPLINARY COMMISSION

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF INDIANA

REPLY OF PETITIONER TO BRIEF FOR RESPONDENT

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EDITOR'S NOTE

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Respondent's Brief in Opposition to the Petition for Writ of Certiorari was received by the Petitioner on or about July 22, 1987.

Florence Anne Briggs, for her Reply to Respondent's Brief in Opposition to Petition for Writ of Certiorari, says:

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For purposes of this Reply, citations to the Petition for Writ of Certiorari filed by Petitioner are designated as "P/C" followed by the page number, e.g. "P/C 22;" citations to the Appendix are designated as P/C/Ap" followed by the page number, e.g. "P/C/Ap 22;" citations to Respondent's Brief in Opposition are designated as "R/B" followed by the page number, e.g. "R/B 22."

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In answering the Petition for Writ, Respondent has indulged in such homilies as, "(t)his allegation is purely speculative" (R/B 4); (t)his argument is untenable," (R/B 2); "(t)he questions...were ...without merit," (R/B 2). These statements are conclusions and do not address the issues.

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R/B 2 states "...two sections of Indiana Admission and Discipline Rule 23 were set forth incorrectly in her brief." Respondent then quotes Rule 23 (10)(d) and (15)(a) in full.

PETITIONER'S ANSWER: Only relevant parts of the above rules were set forth at P/C 4, Paragraph (f) for Sec. 10(d) and P/C 5, Paragraph (j) for Sec. 15(a). However, Rule 23 (10)(d) is set out IN FULL in P/C/Ap A 8, and, again, the relevant part of Rule 23 (15)(a) is set out in P/C/Ap A 10. The 30-day reporting requirement of Rule 23, (15)(a) is not relevant to the Petition for Writ and was waived by F.A. Briggs (P/C/Ap C 84 at (j); see also, R/B 3 under "Statement of the Case."

R/B 4, four lines from the bottom of the page incorrectly states,"...in no way does she show that joinder of trials with her husband prejudiced her cause in any way."

PETITIONER'S ANSWER: P/C 17 commences a recitation of facts setting out how joinder

of trials prejudiced wife/attorney, examples:

(1) Husband was charged with writing an improper will, being co-owner of a joint C.D. and harassment. Wife was not so charged P/C 17.

(2) Five charges against husband were not charged against wife. P/C 17.

(3) The bulk of husband's case involved transactions in which wife was not involved. P/C 18.

(4) Wife refrained from calling a witness because husband and his attorney objected to her doing so and having him as a witness in husband's case. P/C 22.

(5) The Hearing Officer used a court finding against husband to find against wife. P/C 24.

(6) For 8 pages of his report on wife, the Hearing Officer discusses incidents pertaining only to husband, a fact which he acknowled-

ges. P/C 25.

(7) Additional facts of improper co-mingling are set out at P/C 26.

(8) An in-chambers conference at which wife was excluded but in which husband's attorney was included is set out at P/C 26,last paragraph.

(9) The reportof the Hearing Officer on wife refers mostly to husband. P/C 31.

(10) The judgment of the Indiana Supreme Court likewise co-mingles the cases in utilizing facts against husband in which wife had no involvement as a basis for finding against wife. P/C 33.

(11) The very fact that F.A.Briggs was disciplined for giving prudent legal advice to her client-husband amply demonstrates improper joinder of the cases. See Discussion commencing at P/C 27.

R/B 5 about 1/3 down from the top of the page, says that wife assisted her husband to delay the termination of a conservatorship which they (emphasis ours) acknowledged should be terminated.

PETITIONER'S ANSWER: This demonstrates clearly prejudice to wife in being joined with husband for trial. F.A.Briggs (wife) never acknowledged that the conservatorship should be terminated without hearing thereon under the law in effect in Indiana by case law at that time. In fact, also, she advised husband against filing the Petition to Terminate and thought that a hearing should be held on the Petition to Discharge filed by ward's attorneys. The hearing Officer acknowledges this. P/C/Ap C 24. Her reasons for this advice are set forth at P/C 27,28. The very statement made at R/B 5, supra, is addressed at P/C 34 as follows:

"Evidence of co-mingling of the facts and issues is illustrated by the judgment that "they" (spouses) believed the guardianship should be terminated. (App.B-26, infra). This is incorrect since the Hearing Officer's facts recognized that this was not the decision of F.A. Briggs, but of W.J. Briggs since she counseled against the filing of W.J. Briggs'Petition to Terminate.(App. C-24, infra)."

R/B 5, states without citation to the P/C or its Appendix that the crux of Petitioner's Argument is that because the Supreme Court of Indiana did not find in her favor, she was denied due process.

PETITIONER'S ANSWER: A careful reading of the Petition for Writ of Certiorari does not support the statement at R/B 5. The P/C issues are set forth at P/C i-iii and due process challenges are directed only to those issues as follows:

(A) Requiring joinder of trial because of marital relationship . P/C i.

(B) Disciplining an attorney by infusing the acts of another on her because of marital relationship. P/C i.

(C) Presuming legal advice to be tainted because given to a spouse-client. P/C i.

(D) Disciplinary Commission disregarding its own rules and applying them in an unconstitutional fashion. P/C ii and iii.

(E) The incestuous and financially rewarding disciplinary process. P/C iii.

No where does the Petitioner challenge due process simply because of a finding against her.

At R/B 5, the Respondent, again without citation to either the Petition or its Appendix states that the Petitioner argues her right to due process was violated due to the length of time it took to reach final judgment. PETITIONER'S ANSWER: A careful reading of the P/C does not reflect this as a due process challenge. The time issue is involved only because stale charges were brought against F.A. Briggs after her key witnesses who could have testified in her behalf were deceased. Discussion of this commences at P/C 35. There

is no allegation in P/C of delay after the Complaint was filed as Respondent herein implies by saying that due process was violated by the length of time it took to reach final judgment as being one of Petitioner's allegations (R/B 5).

R/B 5 states that preservation of evidence in this case was quite easy.

PETITIONER'S ANSWER: The witnesses who were necessary to F.A. Briggs' defense were dead before the Complaint was filed...therefore, there could be no preservation of evidence/ testimony. See P/C 36 et seq. In one instance, the delay charged allegedly occurred February-May 1977; no "delay" grievance was filed; Verified Complaint was filed July 1983; witness had died March 1981.

Also, at least one witness was lost to Petitioner by the actions of the Executive Secretary of the Disciplinary Commission. P/C 47. The charge against F.A.Briggs related to November

1980 in time. Grievance was filed May 1981; witness died June 1983; Verified Complaint was filed July 1983. July 1982 had proper notification been made to F.A. Briggs, she would have appeared before the Disciplinary Commission with her witness. P/C 39.

R/B 5: "Petitioner also argues...that her right to due process was violated due to the length of time it took to reach a final judgment."
R/B 5: states that incidental delays in part can be attributed "directly to the petitioner and and her attorney husband."
PETITIONER'S ANSWER: The Respondent has confused the issues raised in # 86-1976 (W.J. Briggs, Petitioner) which assert a speedy trial-delay issue after the filing of the Verified Complaint. F.A. Briggs does not raise a speedy trial-delay issue after the filing of the Complaint. This Petitioner requested only one 3-month delay in trial--from an April to July trial date.

R/B 5 (last line) "...petitioner argues that Indiana's procedure whereby the Supreme Court of Indiana acts as prosecutor andfinder of fact is inconsistent with the due process clause...."

PETITIONER'S ANSWER: Petitioner addresses cumulative due process violations indulged in by the Disciplinary Commission as evincing a "deliberate indifference to the rights of undersigned, (P/C 41)and also the pecuniary interest that the Disciplinary Commission as an arm of the Indiana Supreme Court derives from the assessment of misconduct against an attorney. (P/C 54. Therefore, something more than the combining of functions is addressed by the Petitioner.

Wherefore, the undersigned petitions the Court to grant her relief as requested in her Petition for Writ of Certiorari.

Respectfully submitted,

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